

## Internal Revenue Service

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1502.75-10

In Re:

Acquirer =

Target =

Subsidiary =

Merger Agreement =

State X =

State Y =

Date 1 =

Date 2 =

Date 3 =

Month =

Exchange A =

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:B03  
PLR-140060-12  
Date:  
January 09, 2013

a =

b =

c =

d =

e =

Convertible Preferred =

Dear :

We respond to your request dated September 14, 2012, for rulings on the federal income tax consequences of completed and proposed transactions. The material information submitted in that request and in subsequent correspondence is summarized below.

Acquiror is a publicly-traded State X corporation and the common parent of a consolidated group of corporations (the "Acquiror Group"). On Date 1, Target and Acquiror entered into the Merger Agreement under which Target is to merge with and into a single-member, limited liability company, owned by Acquiror, which is disregarded for federal income tax purposes (the "Merger"). Target is a publicly-traded State Y corporation and the common parent of a consolidated group of corporations (the "Target Group"). Target is a holding company that conducted business through its subsidiaries, principally, its wholly owned subsidiary, Subsidiary.

Target holds Acquiror common stock representing approximately a percent of the total number of shares of Acquiror common stock outstanding and all of Acquiror's outstanding Convertible Preferred which, if converted, would result in Target holding in the aggregate approximately b percent of the total number of shares of Acquiror common stock outstanding.

Target has a single class of common stock trading on Exchange A. Target has granted restricted stock unit awards, deferred stock unit awards ("Restricted Awards") and stock options ("Target Stock Options") under its various employee stock incentive plans. Target Stock Options to purchase c shares of Target's common stock and Restricted Awards with respect to d shares of Target's common stock are outstanding.

#### SHARE DISTRIBUTION

On Date 1, Target's board of directors recommended for shareholder approval the pro rata distribution of all of the outstanding common stock of Subsidiary by Target to Target's shareholders (the "Share Distribution"). In order for Target to effect the Share Distribution, State Y corporate law required both board approval and shareholder approval of Target shareholders holding at least two-thirds of the outstanding Target common shares. Such shareholder and board approval were obtained, and the Share Distribution took place on Date 2.

Other than its Acquiror stock and some cash and cash equivalents, Target either disposed of, or contributed all of its remaining assets and subsidiaries to Subsidiary. Since the Share Distribution, Subsidiary has been an independent, publicly-traded company.

## MERGER

Pursuant to State Y and State X corporate law, the Merger must be approved by the separate board of directors of both Acquiror and Target. In addition, approval of the Merger requires (a) an affirmative vote of a majority of the Acquiror stockholders, including Target, (b) an affirmative vote of a majority of the Acquiror stockholders, excluding Target, and (c) two-thirds of the Target shareholders. Acquiror and Target will each hold a special meeting of its shareholders in order to obtain approval for the Merger. The shareholder meetings regarding the Merger are expected to occur sometime in mid to late Month.

If approved by both the Target and Acquiror shareholders, the Merger is expected to close on Date 3. In connection with the Merger, the following steps either have occurred or will occur:

1. Acquiror formed a State X limited liability company, wholly owned by Acquiror, which is disregarded for federal income tax purposes ("Acquisition LLC", together with Acquiror, will be referred to as "Acquiror.")
2. Target will merge with and into Acquisition LLC, at which time the separate existence of Target will cease.
3. Under the Merger Agreement, Target's common stock will be converted into the right to receive (i) a certain number of shares of Acquiror common stock, and (ii) cash in lieu of fractional shares (collectively, the "Merger Consideration"). No Merger Consideration will be delivered in exchange for any (a) Target common stock held as treasury shares by Target, (b) Target common stock owned by Acquiror or Acquisition LLC, or (c) Acquiror common stock or Acquiror preferred stock owned by Target immediately before the Merger. Any outstanding Acquiror preferred stock not owned by Target will be converted into Acquiror common stock in accordance with its terms. The outstanding shares of Target common

stock (including Target common stock held as treasury shares), and the Acquiror common and preferred stock held by Target, will be cancelled in the Merger.

Under the Merger Agreement, no fractional shares of Acquiror common stock will be issued in the Merger. Fractional shares will be aggregated and the exchange agent will cause the whole shares obtained thereby to be sold in the open market and will make available the net proceeds to the Target shareholders entitled to receive such cash.

As a result of their ownership of Target stock, it is expected that the Target shareholders will hold approximately b percent of the fair market value of Acquiror's stock immediately after the Merger.

## REPRESENTATIONS

The following representations have been made in connection with the Merger:

- a) The Share Distribution and the Merger have been undertaken for valid business purposes.
- b) The fair market value of the Merger Consideration received by the Target shareholders will be approximately equal to the fair market value of the Target stock surrendered in the Merger.
- c) At least 40 percent of the value of the proprietary interests in Target will be exchanged for Acquiror common stock and will be preserved in the Merger within the meaning of Treas. Reg. § 1.368-1(e).
- d) Neither Acquiror nor any person related to Acquiror (within the meaning of section 1.368-1(e)(3)) has any plan or intention to reacquire any of the Acquiror common stock issued in the Merger; provided, however, that Acquiror may, solely to the extent permitted by Rev. Rul. 99-58, 1999-2 C.B. 701, effect open market purchases of Acquiror common stock.
- e) Acquiror has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the transaction, except for dispositions made in the ordinary course of business, transfers described in section 368(a)(2)(C) or section 1.368-2(k), and cancellation (in the Merger) of the Acquiror common and preferred stock held by Target.
- f) The liabilities of Target assumed (within the meaning of section 357(d)) by Acquiror were incurred by Target in the ordinary course of its business and are associated with the assets transferred.

- g) Following the Merger, Acquiror will continue its historical business.
- h) Acquiror, Target, and the shareholders of Target, will pay their respective expenses, if any, incurred in connection with the Merger.
- i) There is no intercorporate indebtedness existing between Acquiror and Target that was issued, acquired, or will be settled at a discount.
- j) No two parties to the Merger are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- k) Target is not under the jurisdiction of a court in a title 11 or similar case within the meaning of section 368(a)(3)(A).
- l) The fair market value of the assets of Target transferred to Acquiror (including the Acquiror common and preferred stock held by Target immediately before the Merger) will equal or exceed the sum of the liabilities assumed (within the meaning of section 357(d)) by Acquiror.
- m) Target and Acquiror have adopted a plan of merger, and the Merger will occur pursuant to such plan.
- n) The payment of cash in lieu of fractional shares of Acquiror common stock is solely for the purpose of avoiding the expense and inconvenience to Acquiror of issuing fractional shares and does not represent separately bargained-for consideration. The total cash consideration that will be paid in the Merger to the Target shareholders in lieu of issuing fractional shares of Acquiror common stock will not exceed one percent of the total consideration that will be received by the Target shareholders in exchange for their shares of Target stock. The fractional share interests of each Target shareholder will be aggregated, and no Target shareholder will receive cash in an amount equal to or greater than the value of one full share of Acquiror common stock.
- o) At the time of the Merger, Acquiror will be the common parent of an affiliated group of corporations that files a consolidated federal income tax return.
- p) At the time of the Merger, the fair market value of Target, excluding any value attributable to the Acquiror common and preferred stock held by Target immediately before the Merger, will be less than the fair market value of Acquiror.

#### RULINGS

Based solely on the information submitted and the representations set forth above, we hold as follows:

- (1) The Merger will qualify as a reorganization within the meaning of section 368(a)(1)(A). Acquiror and Target will each be “a party to a reorganization” within the meaning of section 368(b). In the Merger, Target will be treated, for federal income tax purposes, as having transferred all of its assets, including the Acquiror stock held by it, to Acquiror, in exchange for newly-issued Acquiror stock. Thereafter, Target will be treated as distributing the Acquiror stock received in the Merger to its shareholders in exchange for their Target shares.
- (2) Target will recognize no gain or loss upon the transfer of its assets to Acquiror (including the Acquiror common and preferred stock held by Target immediately before the Merger) solely in exchange for newly-issued Acquiror common stock and the assumption of Target liabilities, if any, by Acquiror (sections 361(a) and 357(a)).
- (3) Target will recognize no gain or loss on the distribution of the Acquiror common stock issued in the Merger to its shareholders (section 361(c)).
- (4) Acquiror will recognize no gain or loss upon its receipt of Target’s assets in exchange for Acquiror common stock (section 1032(a)).
- (5) The basis of Target’s assets (other than the Acquiror common and preferred stock held by Target immediately before the Merger) in the hands of Acquiror will be the same as the basis of such assets in the hands of Target immediately before the Merger (section 362(b)).
- (6) The holding period of Target’s assets in the hands of Acquiror (other than the Acquiror common and preferred stock held by Target immediately before the Merger) will include the period during which Target held such assets (section 1223(2)).
- (7) Acquiror will succeed to and take into account, as of the close of the effective date of the Merger, the items of Target described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder (section 1.381(a)-1).
- (8) Following the Merger, the Acquiror Group will remain in existence with Acquiror as the common parent of such group and the Target Group will cease to exist as of the date of the Merger.

#### CAVEATS

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement

executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

We express no opinion about the tax treatment of the transactions described above under other provisions of the Code or Income Tax Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions described above that are not specifically covered by the above rulings. In particular, we express no opinion as to the tax effects of the Share Distribution. Additionally, we express no opinion as to the tax effects of the Merger to the Target shareholders, and the differing tax treatment the Target shareholders would receive if the Share Distribution and the Merger are considered integrated or separate transactions for federal income tax purposes.

#### PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely yours,

*Gerald B. Fleming*

Gerald B. Fleming,  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel  
(Corporate)

cc: